



This document is scheduled to be published in the Federal Register on 05/21/2012 and available online at <http://federalregister.gov/a/2012-12107>, and on [FDsys.gov](http://FDsys.gov)

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2011-0716; FRL-9673-7]

Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) submittal from the State of Oregon to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA finds that the current Oregon SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

**DATES:** This action is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2011-0716. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential

Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall at telephone number: (206) 553-6357, e-mail address: [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we”, “us” or “our” are used, we mean EPA. Information is organized as follows:

## **Table of Contents**

- I. Background
- II. Scope of Action
- III. Final Action
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## **I. Background**

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called "infrastructure" requirements. To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).<sup>1</sup> In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards. The State of Oregon submitted a certification to EPA on September 25, 2008, certifying that Oregon's SIP meets the infrastructure obligations for the 1997 8-hour ozone NAAQS. The certification included an analysis of Oregon's SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone NAAQS. On February 7, 2012, EPA published a notice of proposed rulemaking (NPR) for the State of Oregon (77 FR 6044) to act on the state's infrastructure SIP for the 1997 ozone NAAQS. Specifically in the NPR, EPA proposed approval of Oregon's SIP as meeting the requirements for the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B),

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<sup>1</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007.

(C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in the NPR, this action does not address 110(a)(2)(D)(i) and 110(a)(2)(I). The public comment period for EPA's NPR closed on March 8, 2012. EPA received no comments on the proposed action.

## **II. Scope of Action**

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within "Indian Country" as defined in 18 U.S.C. 1151.<sup>2</sup> Therefore, this SIP approval does not extend to "Indian Country" in Oregon. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. See 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. See 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

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<sup>2</sup> "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

### **III. Final Action**

EPA is approving the September 25, 2008, SIP submittal from the State of Oregon to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is approving the following section 110(a)(2) infrastructure elements for Oregon for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. This action is being taken under section 110 of the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order

13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, and Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 4, 2012

Michelle L. Pirzadeh  
Deputy Regional Administrator,  
Region 10.

40 CFR part 52 is amended as follows:

### **PART 52 -- [AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

### **Subpart MM - Oregon**

2. Section 52.1991 is added to read as follows:

### **§ 52.1991 Section 110(a)(2) infrastructure requirements.**

On September 25, 2008, Oregon Department of Environmental Quality submitted a certification



to address the requirements of CAA Section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS. EPA approves the submittal as meeting the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2012-12107 Filed 05/18/2012 at 8:45 am; Publication Date: 05/21/2012]